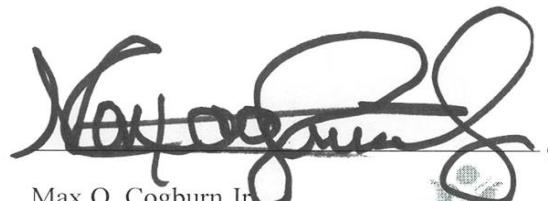


additional evidence, the Appeals Council denied his request for review on August 2, 2021, rendering the ALJ's decision a final decision that Plaintiff could, by right, appeal by commencing an action in the United States District Court. (Podraza Declaration, ¶ (3)(a)-(b)).

Under 42 U.S.C. § 405(g), Plaintiff then had sixty days to commence that action. See 42 U.S.C. § 405(g); see also Podraza Declaration ¶ 3(a)-(b); Podraza Declaration, Ex. 4 at 2-3). Based on the Appeals Council's August 2, 2021, notice, Plaintiff must have commenced his civil action on or before Wednesday, October 6, 2021, (which includes five days to allow for receipt of the Appeals Council's notice). Plaintiff filed his Complaint on November 5, 2021. Because Plaintiff failed to file this civil action within the statutory timeframe, this Court lacks jurisdiction over his claims, and the Complaint will be dismissed.¹ Accord Freeman v. Berryhill, 2019 WL 6711553, at *1-2 (W.D.N.C. Dec. 9, 2019) (finding lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) and dismissing complaint filed approximately two weeks after the statutory deadline); Thompkins v. Berryhill, No. 5:17-cv-00146-FDW-DSC, 2017 WL 10282417, at *1 (W.D.N.C. Dec. 8, 2017) memorandum and recommendation adopted by 2018 WL 4576779 (W.D.N.C. Aug. 7, 2018) (applying sixty-day period and dismissing case filed by pro se plaintiff).

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss, (Doc. No. 5), is **GRANTED**.

Signed: March 17, 2022


Max O. Cogburn Jr.
United States District Judge

¹ Moreover, Plaintiff does not argue, nor does the Court find, any extraordinary circumstances present that would justify extending the sixty-day period.